IN THE HICH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.135 OF 2005

Shrikant Manohar Bhandarkar ... Petitioner

V/s

The State of Maharashtra ... Respondent

Shri Prakash Naik for Shri D.V. Suitar for petitioner

Shri D.P. Adsule, APP for the State.

Coram : V.M. Kanade, J.

Dated : 24/02/2005.

P.C. :-

1 By this petition filed under section 482 of Code of Criminal Procedure and under article 237 of Constitution of India, the petitioner is seeking an order for quashing and setting aside the order dated 08/12/2004 in misc. application No.1705 of 2004 in session case No. 272 of 2001 passed by the Additional Session Judge,Greater Bombay.

2 Brief facts relevant for the purpose of deciding this writ petition are stated as under.

A complaint was lodged by one Sonali Telang in Dharavi Police Station bearing CR No.406 of 1999 on

23/07/1999 and the offence under sections 420, 417,465, 468, 471 and 376 of the Indian Penal Code was registered against him. The petitioner filed misc. application No. 1705 of 2004 in the Session Court for discharge under section 227 of Criminal Procedure Code. It is submitted that there was no sufficient ground for proceeding against the accused and ingredients of the offence under sections 376, 420,417,465,469 and 471 of the Indian Penal Code are not attracted in this case. It is submitted that even if material produced by the prosecution is taken at its face value, no evidence is disclosed against the accused.The trial court after going through the facts of the case and after taking into consideration various judgments of the Supreme Court and this court dismissed the application filed by the petitioner.

3 In the complaint filed by Ms. Telang it was stated that she had an affair with the accused from 1995. However, the accused did not marry her. Thereafter in 1998, she got married with a gentleman who is residing at Nagpur. It was alleged that even after her marriage, the accused used to threaten her on phone and blackmailed her. It was stated that the accused told her that he would inform her father-in-law and mother-in-law about their affair. Thereafter, the accused went to Nagpur in February 1999 and again blackmailed the complainant and obtained her signature on the document which was purported to be the marriage

registration certificate and that the accused showed this certificate to her mothder-in-law and father-in-law and as a result, her husband filed a divorce case against her. The complainant had to return to her parents. It was alleged in the complaint that thereafter he proposed to marriage her and had sexual relation with her.It was alleged in the complaint that the accused had compelled her to have sexual relation with him by blackmailing her and by putting her in fear. Thereafter, one Jagruti Chavan informed the complainant that the accused had similarly blackmailed her and forced her to keep sexual relation with him. It is submitted by the learned counsel appearing for the petitioner that if the averments made in the complaint are taken on its face value, the offence under section 376 of the Indian Penal Code was not made out.It was submitted that the case of the complainant did not fall under any category of section 376. He has relied on number of judgments which were relied on in the trial court.

4 I am unable to accept the submission made by the learned counsel for the petitioner. The law regarding the principles which are to be taken into consideration while considering an application for discharge is quite well settled. In the case of State of Bihar v. Ramesh Singh reported in A.I.R. 1977 S.C. 2018 wherein the Supreme Court has observed that “..... An exhaustive list of the circumstances to indicate as to what will lead to one

conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the quilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under section 227 or section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under section 228 and not under section 227".

5 If the complaint filed by the complainant is read as a whole, it can be seen that the accused had blackmailed the complainant and had compelled her to have sexual relations with him by threatening her. Thus, it cannot be said that there are no averment s in the complaint which absolve the accused from the charges which are levelled against him. There is no merit in the submission made by the learned counsel for the petitioner. The trial court to decide the question after the evidence is adduced by the prosecution and thereafter to give its finding on the facts of the case. Writ petition accordingly dismissed.

(V.M. Kanade, J.)